

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5733 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL A PRAJAPATI

Versus

GANGAJI G THAKORE

Appearance:

MR MC BHATT for Petitioners
NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5
MR S. DAVE, Ld. AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/08/2000

ORAL JUDGEMENT

In the present petition rule has been issued and interim relief directed to be continued by order dated 18-6-91. The facts of the present petition are that respondents nos.1, 2 and 3 are owners and occupiers of land bearing survey no.151/12, admeasuring 1 Acre, 3 Gunthas in the sim of Village Khoraj, District and

Sub-district Gandhinagar. The petitioners nos.2 and 3 and their father Ambalal Kevalbhai Prajapati purchased the said land by registered Sale Deed executed and registered on July 12, 1982. Annexure-A is the copy of the said Sale Deed executed by respondents nos.1 and 2 in favour of the petitioners. Ambalal Kevaldas Prajapati died in the year 1983. The respondent no.4 initiated proceedings under Section 84-C of Bombay Tenancy and Agricultural Lands Act against the transfer of the said land by registered Sale Deed. The respondent no.4 passed an order Annexure "B" dated 14-3-1984 and held that the breach of Section 84-C is committed by the impugned transaction of sale and, therefore, it is further directed that the said land be forfeited. The appeal was rejected by order Annexure "C", which was challenged before Gujarat Revenue Tribunal but Tribunal, by order Annexure "D" confirmed the orders Annexures "B" and "C". The petitioner being aggrieved by the said order Annexure "B" preferred Tenancy Appeal bearing No.185 of 1984 in the Court of learned Prant Officer, Gandhiangar. The appeal was preferred under Section 74 of the Bombay Tenancy and Agricultural Land Act.

The learned Advocate Mr. M.C. Bhatt has pointed out that the order passed by the Mamlatdar on 14-3-84 is illegal and finding given by the Authority is also not based upon evidence and contrary to the record. Mr.Bhatt also pointed out that in appeal also, the Collector has not properly appreciated the contention raised by the petitioner and dismissed the said appeal, confirming the order passed by the Mamlatdar dated 14-3-84. Similarly, in revision application also the Gujarat Revenue Tribunal has not appreciated the facts on record, but come to contrary findings from record. Mr.Bhatt submitted that according to the certificate issued by the Executive Engineer, Road and Building Department, Ahmedabad, the distance between Khoraj and Jagatpur is 4 k.m. and that comes within the range of statutory provisions. He also pointed out that page 33 and 34, are copies of Village Form No.7/12, wherein the name of Ambalal Kevaldas is mentioned. From the said record, Mr.Bhatt submitted that Ambalal Kevaldas Prajapati was an agriculturist, having the land within the radius of 8 kms. Therefore, below Authorities have to consider these aspects, but not considered properly the said documents and come to the contrary conclusion and therefore, the order passed by the below Authorities are required to be quashed and set aside. Against that, the learned APP, Mr.S.Dave has submitted that in respect to the certificate issued by the Executive Engineer at page 32 and Village Form No. 7/12 at page 33 and 34 of the documents, these aspects

were considered by the below Authorities rightly and the contention raised by the petitioner was rightly rejected by the Authorities. Mr.Dave pointed out that all the Authorities have arrived at concurrent findings of facts on the basis of record. He further pointed out that the Authorities have not committed any error either on law or on facts, which give powers or jurisdiction to this Court to interfere with the order. Learned AGP, Mr.Dave has also submitted that this Court, having very limited jurisdiction while exercising the powers under Articles 226 and 227 of the Constitution of India, cannot act as an Appellate Authority over the decision of lower Authorities and similarly this Court cannot reappreciate the evidence, which has been appreciated by the below Authorities as per the decision of this Court reported in 1998 (1) GLR 17 (Ahmedabad Municipal Corporation Vs. Virendrakumar Jayantibhai Patel) and 1998 AIR Supreme Court Weekly 1840. I have considered submissions of both the learned Advocates and I have also perused the order passed by below Authorities. The Mamlatdar has, in his order in case No.2950/83, considered all the relevant documents and scrutinised the record and the particular Sale Deed bearing no.1498 dated 12-7-1982, which has not been sanctioned by the Authority. The Mamlatdar has also considered that the petitioners are not agriculturist and, therefore, before the transaction of Sale Deed, the necessary permission under Section 63 is required to be obtained by the petitioner and which has not been obtained and therefore, considering this fact that under Section 84 (c) (2) the said transaction is illegal and contrary to the provisions of the Act, the Mamlatdar has quashed and set aside the transaction of Sale Deed and come to the conclusion that said transaction is illegal and contrary to the provisions of Section 63 by passing order dated 14-3-1984. I also perused the order passed by Prant Officer in Tenancy Appeal bearing No.185 of 1984, wherein also the Appellate Authority has considered that there was no specific document produced on record by the petitioner to prove the fact that distance between disputed land and territory of the said village is within the range of 8 kms and therefore, the petitioner has failed to produce and prove the said fact before the Appellate Authority. Appellate Authority has also considered the relevant Sections of Bombay Tenancy and Agricultural Lands Act, namely, Section 2(2) and Section 2(6) and 1, 2, and 3, and the Appellate Authority has come to the conclusion that the petitioner was not an agriculturist, because when the transaction was arrived at between the petitioner and the respondent, no such permission under Section 63 has been obtained and Sale Deed produced by the appellant. Therefore, the

transaction of Sale Deed is also said to be violative of Section 63 of the Bombay Tenancy and Agricultural Act. Considering these aspects, the Appellate Authority has rejected the appeal by order dated 21-10-87. I also perused the order passed by the Gujarat Revenue Tribunal in revision application No.133/88. The Revisional Authority has dealt with each and every contention of the petitioner and also considered the certificate issued by the Executive Engineer and the Village Form No.7/12 which was produced on record. The Revisional Authority has also come to the conclusion that the petitioner has not produced any satisfactory evidence to prove the fact that the disputed land is within the range of 8 kms. The Revisional Authority has also come to the conclusion that against Survey No.146, the name of only the petitioner is entered as Ambalal Kevaldas and the said land has been purchased by the petitioner and name of Govindbhai Ambalal and Ashok Amrutlal were not there on record. Therefore, considering the relevant Sections of Tenancy Act, the Revisional Authority has come to the conclusion that the petitioner has not produced any satisfactory evidence on record to prove that petitioners are agriculturist within the meaning of provisions of Tenancy Act. Ultimately, the Gujarat Revenue Tribunal rejected the said application. I have perused all the orders passed by the Mamlatdar, below Authorities and Revisional Authority. All the Authorities have applied their mind and all the Authorities have given detailed reasons in support of their conclusion and also considered the relevant records, which have been produced by parties before the Authorities and according to my opinion the below Authorities have come to right conclusion on the basis of facts on record and none of the Authorities has committed any error either on law or on facts, which requires any interference by this Court, while exercising power under Articles 226 and 227 of the Constitution of India. Therefore, the present petition is required to be dismissed. Rule is discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

24-8-2000 (H. K. Rathod, J.)

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